

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

JIMMY DEAN CARROLL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Nos.: 3:12-CR-76-TAV-HBG
3:14-CV-259-TAV

ORDER

Before the Court now is the Report and Recommendation of Magistrate Judge H. Bruce Guyton, entered on May 2, 2017 [Doc. 56]¹ (the “R&R”), which addresses an evidentiary hearing in relation to Petitioner’s § 2255 motion [Doc. 24]. In the R&R, Judge Guyton recommends that the Court accept Petitioner’s request to withdraw his § 2255 motion in its entirety, and dismiss the § 2255 motion with prejudice. He also recommends that no certificate of appealability issue for this case because Petitioner is no longer pursuing his constitutional claims of the ineffective assistance of counsel.

There have been no timely objections to the R&R, and enough time has passed since the filing of the R&R to treat any objections as having been waived. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72. The R&R provides that Petitioner made an oral motion during a hearing to withdraw his claim that his counsel failed to file a requested appeal on his behalf. Petitioner also filed a written motion to withdraw all other claims raised in his § 2255 motion [Doc. 55]. After careful review of the matter, the Court is in agreement with Magistrate Judge Guyton’s recommendations, which the Court adopts and incorporates into its ruling.

¹ All citations to the record are found on the docket of case no. 3:12-CR-76-TAV-HBG.

Accordingly, the Court **ACCEPTS IN WHOLE** the R&R [Doc. 56]. The Court accepts Petitioner's withdrawal of his § 2255 motion in its entirety, the motion to withdraw claim [Doc. 55] is **GRANTED**, and the § 2255 motion [Doc. 24] is hereby **DISMISSED WITH PREJUDICE**. The Court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court **DENIES** Petitioner leave to proceed *in forma pauperis* on appeal. See Fed. R. App. P. 24. Petitioner having failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability **SHALL NOT ISSUE**. 28 U.S.C. § 2253; Fed. R. App. P. 22(b). The Clerk of Court is **DIRECTED** to **CLOSE** Case No. 3:14-CV-259.

IT IS SO ORDERED.

s/ Thomas A. Varlan
CHIEF UNITED STATES DISTRICT JUDGE

ENTERED AS A JUDGMENT

s/ Debra C. Poplin
CLERK OF COURT